

MTSA Regulations found at 33 CFR Subchapter H
Part 104 Vessels

"The information in this document is for use as an aid to interpretation. Should anything in this document be in conflict with 33 CFR Subchapter H or CG policy, then Subchapter H and the CG policy determinations control."

Q. What vessels are affected by 33 CFR Part 104?

Ans. The regulations found in 33 CFR 104.105 affect the following vessels:

- Mobile Offshore Drilling Unit (MODU), cargo, or passenger vessels subject to SOLAS
- Foreign cargo vessels greater than 100 gross register tons except foreign vessels that have on board a valid International Ship Security Certificate certifying that the verifications required by Part A, Section 19.1, of the International Ship and Port Facility Security (ISPS) Code have been completed. See additional requirements in 33 CFR 104.105 (c).
- U.S. self-propelled cargo vessels greater than 100 gross register tons subject to 33 CFR subchapter I, except commercial fishing vessels;
- Vessels subject to 46 CFR chapter I, and subchapter L;
- Passenger vessels subject to 46 CFR chapter I, subchapter H;
- Passenger vessels certificated to carry more than 150 passengers;
- Other passenger vessels carrying more than 12 passengers on an international voyage, including at least one passenger-for-hire;
- Barge subject to 46 CFR chapter I, subchapters D or O;
- Barge subject to 46 CFR chapter I, subchapter I, that carries Certain Dangerous Cargoes in bulk, or on an international voyage;
- Tankship subject to 46 CFR chapter I, subchapters D or O; and
- Towing vessel greater than eight meters in registered length that is engaged in towing a barge or barges subject to this part (except for some assistance vessels). See 33 CFR 104.105

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Q. What is the impact to a vessel owner/operator who is subject to MTSA-ISPS regulations of 33 CFR part 104 and who fails to submit a required Vessel Security Plan (VSP) to the Coast Guard?

Ans. On or after July 1, 2004, a domestic vessel owner/operator subject to MTSA regulations, 33 CFR Part 104 is required to have a U.S. Coast Guard approved security plan in order to conduct MTSA applicable vessel operations. Failure to have fully implemented an approved security plan is a violation of the MTSA regulations and may result in a civil penalty against the owner/operator of the vessel. Under the regulations, the Coast Guard Captain of the Port (COTP) may impose civil penalties that range up to \$25,000.00 per violation of the MTSA requirements. After the July 1, 2004 deadline, non-compliant operators are

subject to having their vessel operations restricted until an approved security plan is in place. See 33 CFR 104.310, 33 CFR 101.415, and NVIC 04-03, Change-1.

Q. What is the process for submission and approval of a Vessel Security Plan (VSP)?

Ans. U.S. Flag & Foreign Flag, Non-SOLAS Vessels - VSP(s) are submitted to the USCG Marine Safety Center (MSC) for review and approval in accordance with the information below. A letter stating that the VSP meets the requirements set forth in the regulations will be returned from the MSC. Certain classes of vessels (e.g. towing vessels, small passenger vessels, etc.) may have their VSP approved on the basis of complying with an organization-specific Alternative Security Program approved by the U. S. Coast Guard. Requirements for participating in an ASP, are listed in the Final Rule at 33 CFR 101.120 and 33 CFR 104.140.

Foreign Flag, SOLAS Vessels – VSP(s) will be approved by the flag administration, with compliance demonstrated by issuance of a valid International Ship Security Certificate (ISSC). Foreign vessels that have a valid International Ship Security Certificate on board that attests to their compliance with the International Convention for Safety of Life at Sea, 1974, (SOLAS) the ISPS Code, part A, and the relevant provisions in the ISPS Code Part B, will be deemed in compliance with this part, except for those sections otherwise specified. Foreign vessel compliance will be verified during Port State Control verification boardings.

U.S. Flag & Foreign Flag, Non-SOLAS Vessels - The owner or operator of vessels not in service on or before December 31, 2003, must submit a completed Vessel Security Assessment (VSA) report, one copy of their VSP, and a letter certifying that the VSP meets applicable requirements of this part to Commanding Officer, U.S. Coast Guard Marine Safety Center in either paper or electronic format 60 days prior to intended operations. If the owner or operator intends to operate under an Approved Alternative Security Program (ASP), a letter signed by the vessel owner or operator must be submitted stating which approved ASP the owner or operator intends to use. Ref: 33 CFR, 410, NVIC 04-03 Change-1.

U.S. Flag & Foreign Flag Non-SOLAS vessel security plans may be submitted electronically, or on floppy disk or CD-ROM in Microsoft Word or pdf format via first class mail or express delivery service to:

Commanding Officer
Marine Safety Center
400 Seventh Street S.W., Room PL-200
Washington, D.C. 20590

Due to the Sensitive Security Information procedures, security plans may not be submitted via e-mail. For additional guidance, a VSP information desk can be reached at phone number (202) 366-3879, fax (202) 366-3817, or by email at SecurityPlanInfo@msc.uscg.mil.

Q. What is an Alternative Security Program (ASP) and who is eligible to participate?

Ans. An Alternative Security Program (ASP) permits a third-party or industry organization to utilize a standardized security plan that the Coast Guard, Commandant (G-MP), has reviewed and approved as providing an equivalent level of security as required by 33 CFR Part 104.

Owners and operators of vessels required to have security plans under Part 104 of subchapter H other than vessels that are subject to SOLAS Chapter X1, may implement an ASP that has been approved by the Commandant (G-MP) that once fully implemented meets equivalent level of security as required by 33 CFR Part 104. See 33 CFR, Part 101.120 (b).

Q. If an industry organization and/or an owner or operator desires to participate in an Alternative Security Program (ASP) what is the process for plan approval?

Ans. Industry organizations representing a maritime segment who opt to submit a standardized security program under the ASP must submit for review and approval, the required documentation in written format to:

Commandant (G-MP)
ATTN: LCDR Calametti
400 Seventh Street, SW, Room PL-200
Washington, DC 20590-0001

See 33 CFR 101.120 (c).

Owners and operators of vessels that were not in service on or before December 31, 2003, but that are otherwise eligible and who intend to operate under an approved ASP must comply with the requirements of 33 CFR Part 104.410 paragraph (a) at least 60 days prior to beginning operations. Owners or operators must implement an approved ASP in its entirety to be deemed in compliance with part 104. A letter, containing the name of the ASP sponsoring organization, the names and official numbers of covered vessels, and a written certification that the vessel owner or operator is a current member of the organization must be submitted to:

Commanding Officer
Marine Safety Center (MSC)
400 Seventh Street, S.W., Room PL 200
Washington, DC 20590-0001

See 33 CFR 104.400 (b) and 33 CFR 101.120 (b) & (c).

Q. Under the Alternative Security Program can a combined security plan be submitted that covers both a facility and a vessel?

Ans. A facility owner or operator may submit an Alternative Security Program (ASP) for review and approval, for fleet-wide plans or plans that discuss exclusive docking arrangements, or a single plan to cover both a facility and a vessel. Approval would be contingent upon the security plan meeting all the requirements of Parts 104, 105, and 106 as applicable, the ASP being implemented in its entirety, and the owner or operator completing and submitting to the cognizant Coast Guard COTP a Facility Vulnerability and Security Measures Summary (Form CG -6025). See 33 CFR 101.120 and Appendix A to Part 105.

Q. What is the procedure for determining the status of a vessel security plan review/approval?

Ans. The Marine Safety Center (MSC) sends a letter to vessel owners/operators who have submitted a vessel security plan (in accordance with 33 CFR Part 104 regulations). Each MSC letter relating to vessel security plans contains a specific "MISLE Tracking Number", enabling an owner or operator to log-on electronically at <http://cgmix.uscg.mil/psix/psix2/> to determine the current status of their security plan submission.

If a vessel owner or operator is unable to utilize the electronic access or has further questions, they may contact the Marine Safety Center at <mailto:securityplaninfo@msc.uscg.mil>, or fax to 202-366-3817, or call 202 366-3879.

Q. What is the International Ship & Port Facility Security (ISPS) Code?

Ans. The Diplomatic Conference on Maritime Security, in December 2002, adopted new provisions in the International Convention for the Safety of Life at Sea, 1974 and this Code to enhance maritime security. These new requirements form the international framework through which ships and port facilities co-operate to detect and deter acts that threaten security in the maritime transport sector. The provisions of chapter XI-2 of SOLAS 74 and this Code apply to ships and to port facilities. See ISPS Code and SOLAS Amendments 2002).

Q. What must a vessel owner or operator do to comply with the ISPS Code and will these actions satisfy the MTSA requirements?

Ans. A U.S. Flag and Foreign Flag NON SOLAS vessel owner or operator subject to the ISPS code must submit a Ship Security Plan for approval, comply with the approved plan, and have the Coast Guard verify compliance in order to receive an International Ship Security Certificate (ISSC). If the vessel owner or operator must also comply with the Maritime Transportation Security Act (MTSA), then the owner or operator must submit a Vessel Security Plan (VSP) in accordance with 33 CFR Part 104.410 paragraph (a) at least 60 days prior to beginning operations. A VSP submitted to satisfy the MTSA requirements would meet most of the requirements for the ISPS Code. See 33 CFR 104.120.

Q. What if a vessel owner or operator is unable to comply with the ISPS Code?

Ans. A U.S. Flag and Foreign Flag NON SOLAS vessel subject to the ISPS Code must be in full compliance with all requirements in order to receive an International Ship Security Certificate (ISSC). Any vessel that does not possess a valid ISSC on or after the July 1, 2004 will be subject to detention overseas, and possible civil penalties in the U.S.

Q. If an owner or operator is operating a U.S. flag vessel under had previously received an exemption from SOLAS for a one-time voyage overseas, why does the owner or operator have to comply with the ISPS Code now?

Ans. The ISPS Code applicability includes vessels on an international voyage. With the increased potential risk associated with operating in a foreign country, the U.S. Coast Guard believes that it is in the interest of national security to hold U.S. flag vessels to the ISPS Code standards.

Q. What is a Continuous Synopsis Record (CSR)? How will a CSR impact owners or operators of US vessels subject to SOLAS? What type of information is required to be in the CSR? Who will issue the CSR?

Ans. On 12 December 2002, the Conference of Contracting Governments adopted Conference Resolution 1, amending the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974. Included among the amendments was Chapter XI, (to be renamed Chapter X1-1) Regulation 5, Section 1 which states that "Every ship to which Chapter 1 applies shall be issued with a Continuous Synopsis Record." For ships constructed before 1 July 2004, the CSR shall, as a minimum, provide the ship's history from 1 July 2004 and thereafter.

All U.S. Flag vessels subject to SOLAS and the International Ship and Port Facility Security (ISPS) Code that travel on an international route are required to carry a Continuous Synopsis Record document.

The CSR shall include, at least, significant vessel operating parameters such as identification of the flag state, name and address of the registered owner, name of all classification society(ies) with which the ship is classed, and other pertinent information. (See Conference Resolution 1 in the Annex to the International Convention for the Safety of Life at Sea (SOLAS), 1974 as amended.)

The U.S. Coast Guard, as the U.S. flag administration agency, will issue the CSR to all vessels authorized to fly the U.S. flag. The CSR shall be on board U.S. vessels no later than 1 July 2004. "The CSR Application Form is accessible via the USCG internet web site at <http://www.uscg.mil/hq/g-m/mp/MTSA.shtml> by clicking on the navigation bar Forms & Templates".

Q. Does a vessel owner or operator have to implement security measures for access control?

Ans. Yes, in general, the owner or operator of an MTSA-ISPS regulated vessel must ensure implementation of security measures to deter the unauthorized introduction of dangerous substances and devices, including any device intended to damage or destroy persons, vessels, facilities, or ports. The vessel owner or operator must also secure dangerous substances and devices that are authorized to be on the vessel; and control access to the vessel. See 33 CFR 104.265.

Q. How does a vessel owner or operator handle access control measures with regards to official visits by law enforcement personnel?

Ans. 33 CFR 101.515(c) states "Vessel, facility, and OCS facility owners and operators must permit law enforcement officials in the performance of their official duties, who present proper identification in accordance with this Section, to enter or board that vessel, facility, or OCS facility at any time, without delay or obstruction. Law enforcement officials, upon entering or boarding a vessel,

facility, or OCS facility, will, as soon as practicable, explain their mission to the Master, owner, or operator, or their designated agent.”

Vessel owners/operators faced with any law enforcement official who declines to establish proper identity are encouraged to provide that official with a copy of the MTSA regulations and the relevant section on access control. If owners/operators have doubts about the authenticity of an official government identification document or credential or are concerned that denying access to an official may result in negative consequences, they should contact the cognizant U.S. Coast Guard COTP for guidance and assistance in effectively resolving the issue. See 33 CFR Part 104/105/106 and Coast Guard Policy Advisory #30-04 at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml> under “Policy Guidance.”

Q. What security examination procedures will a foreign-flagged vessel carrying an International Ship Security Certificate (ISSC) be subject to the first time the vessel enters U.S. waters on or after July 1, 2004?

Ans. On or after July 1, 2004, a vessel’s first visit to a U.S. port will subject that vessel to an ISPS-MTSA security examination if that vessel has not had a compliance examination during the past twelve months, (Ref. Enclosure (1) to NVIC 06-03.). A vessel that had a satisfactory security examination during the aforementioned pre-enforcement program phase would not be subject to another security examination unless they were randomly selected for a security examination or were subject to other “targeting criteria” found in NVIC 06-03 Change-1.

Q. What documentation will Coast Guard vessel inspectors be looking for when they conduct a vessel security compliance inspection to determine the status of implementation of the Vessel Security Plan?

Ans. On July 1, 2004 and thereafter, each vessel owner or operator subject to the Maritime Transportation Security Act regulations must ensure that copies are carried on board the vessel of the (1) approved Vessel Security Plan (VSP) and any approved revisions or amendments thereto, and a letter of approval from the Commanding Officer, CG Marine Safety Center or (2) The VSP submitted for approval and a current acknowledgement letter from the Commanding Officer, MSC, stating that the Coast Guard is currently reviewing the VSP for approval, and that the vessel may continue to operate so long as the vessel remains in compliance with the submitted VSP. These documents must be made available to the U.S. Coast Guard upon request.

For vessels operating under a Coast Guard-approved Alternative Security Program (ASP), a copy of the ASP the vessel is using, including a vessel specific security assessment report and a letter signed by the vessel owner or operator, stating which ASP the vessel is using and certifying that the vessel is in full compliance with that program.

For foreign vessels, subject to the International Convention for Safety of Life at Sea, 1974, (SOLAS), Chapter XI, a valid International Ship Security Certificate (ISSC) that attests to the vessel's compliance with SOLAS Chapter XI-2 and the ISPS Code, part A and is issued in accordance with the ISPS Code, part A, section 19. As stated in Section 9.4 of the ISPS Code, part A requires that the provisions of part B be taken into account in order for the ISSC to be issued. References 33 CFR Part 104.120 (a) and NVIC 06-03 Change 1 are available via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.

Q. What documentation will Coast Guard Inspectors be looking for when they conduct a vessel security compliance inspection of an **unmanned vessel** to determine the status of implementation of the Vessel Security Plan?

Ans. On July 1, 2004 and thereafter, each vessel owner or operator of an unmanned domestic vessel subject to the Maritime Transportation Security Act regulations must maintain the same documentation as outlined above or in paragraph (a) (1), (2), or (3) of section 104.120. The letter required by each of those paragraphs must be on board the vessel. The VSP or program required must not be carried on board the vessel, but must be maintained in a secure location and made available to the Coast Guard upon request during scheduled inspections.

References 33 CFR Part 104.120 (b) and NVIC 06-03 Change 1 are available via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.

Q. What is the impact to operation of a vessel if an owner or operator must temporarily deviate from the requirements of 33 CFR 104.120?

Ans. When a vessel must temporarily deviate from the requirements of this part, the vessel owner or operator must notify the cognizant U.S. Coast Guard COTP, and either suspend operations or request and receive permission from the COTP to continue operating. Reference 33 CFR 104.125 which is accessible via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.

Q. Where can an owner or operator find more specific guidance about compliance before a Coast Guard vessel inspector arrives to conduct a MTSA-ISPS compliance inspection?

Ans. The Coast Guard maintains MTSA-ISPS regulation and policy information in an easily accessible format via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>. If you are unable to find the desired information on the websites, a Coast Guard "MTSA-ISPS Help Desk" is staffed from 8:00 AM-8:00 PM EST, Monday-Friday. The Help Desk staff can be reached at 1-877-687-2243 or 202-366-9991. 33 CFR Part 104 and NVIC 06-03 Change 1 are also available on the internet site listed above.

Q. If a vessel owner or operator is operating in accordance with the approved Vessel Security Plan or Alternative Security Plan (VSP/ASP) but a Coast Guard vessel inspector determines that a security measure(s) fails to adequately address a vulnerability, what is the procedure for requesting an amendment to the security plan? What actions will be required by the owner or operator in the interim?

Ans. A request to amend a previously approved VSP/ASP may be initiated by the vessel owner or operator or, by the Coast Guard upon a determination that an amendment is needed to maintain the vessel's security.

If the amendment action is initiated by the Coast Guard, the vessel owner or operator will receive a written notice and request by the Coast Guard that the vessel owner or operator propose amendments addressing any matters specified in the notice. The owner or operator will have at least 60 days to submit the proposed amendments.

If an amendment request is initiated by the vessel owner or operator, the proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the Commanding Officer, Marine Safety Center allows a shorter period. Proposed amendments to vessel security plans vessel security plans may be submitted on paper, floppy disk or CD-ROM in Microsoft Word or pdf format via first class mail or express delivery service to:

Commanding Officer

Marine Safety Center
400 Seventh Street S.W., Room PI-200
Washington, D.C. 20590-0001

Due to the Sensitive Security Information procedures, security plan information may not be submitted via e-mail. For additional guidance, a VSP information desk can be reached at phone number (202) 366-3879, fax (202) 366-3817, or by email at SecurityPlanInfo@msc.uscg.mil.

Until required amendments are approved by the Commanding Officer, U.S. Coast Guard Marine Safety Center, the owner or operator shall ensure that temporary security measures are implemented to the satisfaction of the Coast Guard. Reference 33 CFR Part 104.415 (a) (1), and CG Policy Advisory #36-04 accessible via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.

Q. If a vessel owner or operator, subsequent to having the VSP/ASP approved, determines that an amendment to the security plan is necessary what is the process for submission of the request? What actions will be required by the owner or operator in the interim?

Ans. If a proposed amendment to a previously approved VSP/ASP is initiated by a facility owner or operator, the request must be submitted to the U.S. Coast Guard Marine Safety Center (MSC) at:

Commanding Officer
Marine Safety Center
400 Seventh Street S.W., Room PI-200
Washington, D.C. 20590-0001

The proposed amendment must be submitted at least 30 days before the amendment is to take effect unless the MSC allows a shorter period for submission. The MSC will approve or disapprove the proposed amendment in accordance with 33 CFR Part 104.410.

The vessel owner or operator is not limited in the timely implementation of such additional security measures, not enumerated in the approved VSP, as necessary to address exigent security situations. In such cases, the owner or operator must notify the MSC by the most rapid means practicable as to the nature of the additional measures and the period of time these additional measures are expected to be in place. Reference 33 CFR 104.415 (a) (2) & (3), 33 CFR 104.410, and CG Policy Advisory #36-04 accessible via the internet at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>.

Q. Has a policy been published to outline procedures that Customs and Border Protection (CBP), Immigration and Customs Enforcement (ICE), and Transportation Security Agency (TSA) law enforcement personnel will follow in

order to access vessels or facilities, other than during emergencies or exigent circumstances, in the performance of their duties?

Ans. A standardized policy outlining credentialing procedures for access to commercial vessel and entry to waterfront facilities, when law enforcement personnel are performing duties in the normal course of business, has been published. The full text of the policy, issued by the Undersecretary for Border and Transportation Security on August 24, 2004, can be found on this website under "Policy Guidance."

Recognizing that security is a shared responsibility with both the private and public sectors, CBP, ICE, and TSA law enforcement personnel should perform the following actions when attempting to access a commercial vessel or facility when performing their "normal" duties:

- (1) Identify yourself and organization verbally;
- (2) Present an official government issued photo identification card at each security checkpoint, being cognizant of protecting personal information (Ref: 33 CFR 101.515). There is no requirement to provide an alternate means of identification i.e. drivers license;
- (3) Explain, if necessary, that the ID card is federal property and therefore cannot and will not be surrendered;
- (4) Sign the visitor logbook, provide an office contact number if requested, and ensure that personal information (such as social security number) is not entered into the log;
- (5) Explain, if necessary, that properly identified law enforcement personnel on official business are not required to consent to a baggage or government vehicle search;
- (6) Explain, if necessary, that law enforcement personnel are authorized to carry firearms while conducting routine operations on a vessel or facility;
- (7) Recommend the facility or vessel amend their security plan if their approved security plan conflicts with the procedures outlined here for dealing with law enforcement officers; and
- (8) Accept a personnel escort, if an escort is readily available, and/or visitor badge if requested by the vessel or facility security representative. On those occasions in which law enforcement officials have specific safety or security concerns, law enforcement personnel may decline the offer of an escort.

These procedures shall not apply to law enforcement officers accessing vessels or facilities during emergencies or exigent circumstances in the performance of their duties.

U.S. Coast Guard personnel will follow similar credentialing procedures when attempting to access a commercial vessel or facility when performing their "normal" law enforcement duties. These procedures are published in U.S. Coast Guard Policy Advisory Council Decision (PACD) #30-04, "Credentialing of Federal, State and Local Officials," issued 17 June 2004. A copy of PACD #30-04 can be found on the CG Intranet under 'Policy Guidance' at <http://cgweb.comdt.uscg.mil/G-Mp/Helpdesk.htm> or

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on the CG Internet under 'Policy Guidance' at <http://www.uscg.mil/hq/g-m/mp/mtsa.shtml>. For purposes of the MTSA, the applicability of the regulations to commercial vessels is specified in 33 CFR 104.105 and to waterfront facilities is specified in 33 CFR 105.105.